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**INFILL AND RESIDENTIAL DEVELOPMENT STUDY  
TREE PRESERVATION TEAM  
RECOMMENDATIONS**

**TP 2  
HERITAGE AND SPECIMEN TREES**

**ISSUE:** Increase tree preservation during the design and construction of residential infill projects.

**IDEA:** Adopt an ordinance that enacts the existing state enabling legislation to preserve heritage and specimen trees.

**RESEARCH:** Research was conducted to determine the impact of adopting a local ordinance pursuant to existing state enabling legislation, regulating the preservation and removal of heritage, specimen, memorial and street trees. The Big Tree Registry was used as the data base for location of the largest trees in the County. The Registry was also analyzed to determine how many trees are growing on public land. Research was not conducted on the number of memorial and street trees as this data is not available. This recommendation was originally made by the 1999 Tree Preservation Task Force with a deadline of December 2000 for completion of the research and feasibility study.

**ANALYSIS:** The state enabling legislation includes heritage, specimen, memorial and street trees as the trees that could receive protection if an ordinance as provided for by the enabling legislation is adopted by a local jurisdiction. The definition of each of these categories of trees rests with the local governing body and each such tree must be individually designated by the local governing body. In addition, the designation of such trees is required to be made by an arborist or urban forester and must be formally adopted in an ordinance adopted by the governing body.

The state enabling legislation, Virginia Code Ann. §10.1-1127.1 (Michie 1998), allows for the provisions of such a tree conservation ordinance not to apply to: work conducted on federal or state property; emergency work to protect life, limb or property; routine installation, maintenance and repair of cable and wires used to provide cable television, electric, gas or telephone service; activities with minor effects on trees, including but not limited to, home gardening and landscaping of individual homes; and commercial silvicultural or horticultural activities, including but not limited to planting, managing, or harvesting forest or tree crops. The legislation also includes a requirement in any local ordinance for a compensation provision to apply in the event that the application of any ordinance regulating the removal of designated trees results in a taking of private property for a public purpose or use.

Heritage and specimen trees are evaluated for preservation during the review of rezoning, special exception, special permit, and variance applications. The Policy Plan portion of the Comprehensive Plan provides guidance to staff reviewing these applications on the preservation and restoration of tree cover. Heritage and specimen trees found on application parcels are recommended by staff for preservation. This process has been highly successful in achieving the

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preservation of designated trees. While the Policy Plan text does not specifically emphasize the preservation of heritage and specimen trees, in a high percentage of cases, trees identified by staff are preserved through the provision of a proffer or development condition.

Staff's analysis of the existing list of the largest trees in the County suggests that the adoption of this legislation may be feasible. A County ordinance should include a mechanism to allow for the removal of heritage and specimen trees if the preservation of these trees would result in what is deemed a taking of private property for a public purpose or use. Based on research conducted by staff it would be very rare for the preservation of an individual tree to preclude the reasonable use of a lot.

**EFFECTS:** The adoption of a local ordinance pursuant to the state enabling legislation would provide a mechanism for the preservation of designated trees during the land development review process. The legislation includes exceptions that allow for routine activities to occur around the trees without the property owner being in violation of the requirements. It may be that individual listed trees could preclude the reasonable use of a lot or otherwise result in a compensable taking under the state enabling legislation due to their size or location. Any local ordinance to be developed for consideration by the Board of Supervisors should allow for exceptions and other procedures that would address the "taking" issue and minimize its impact.

**TEAM RECOMMENDATION:** The heritage and specimen tree legislation should be studied further to determine the structure and proposed provisions of an ordinance to be considered for adoption by the Board of Supervisors in keeping with the recommendation of the 1999 Tree Preservation Task Force. The ordinance should result in a new chapter of the County Code and a new objective in the Environment chapter of the Policy Plan.